

REMARKS

In the Office Action, the specification was objected to as to informalities; claims 1-26 were rejected under 35 U.S.C. § 112, first paragraph; claims 1-26 were rejected under 35 U.S.C. § 112, second paragraph; claims 1-13 and 17-26 were rejected under 35 U.S.C. § 102(b); and claims 14-16 were rejected under 35 U.S.C. § 103(a). Claims 1, 11, 21 and 23 have been amended. Claims 8 and 20 have been canceled without prejudice or disclaimer. Applicants believe that the rejections have been overcome or are improper in view of the amendments and for the reasons set forth below.

In the Office Action, the Patent Office objects to the specification as to informalities. Specifically, the Patent Office objects to the paragraph at page 5, line 12 as being improper. Applicants have amended the paragraph at page 5, line 12 to correct the informalities. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

Claims 1-26 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. In particular, the Patent Office states that claims 1, 21 and 23 require a negative limitation that no elastomeric yarns be present in the invention, but the specification states that an elastomeric yarn is used to make the invention. Additionally, the Patent Office states that claim 20, which depends from claim 1, includes a limitation which requires an elastomeric yarn be present in the invention. Applicants have canceled claim 20 and amended the specification and claims 1, 21 and 23 to clarify the claimed invention. Moreover, the specification provides support for the elements of claims 1, 21 and 23. Specifically, the specification states that "[f]abrics of the first aspect of the invention do not include an elastomeric yarn." (Specification, page 4, line 29). The specification also states that one example of a use for the tubular fabric of the present invention is in making garments including underwires such as bras. (Specification, page 5, line 29 to page 6, line 5). The specification also provides the method of making or forming the tubular fabric of the present invention on pages 13 to 19 of the specification. Accordingly, Applicants respectfully submit that the rejection to claims 1-26 under § 112, first paragraph has been overcome and respectfully request that this rejection be withdrawn.

In the Office Action, claims 1-26 were also rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Patent Office states that claims 1, 21 and 23 are unclear because the claims lack structural or processing steps to achieve the recited limitation. In addition, the Patent Office states that claims 8, 11 and 20 are unclear. Applicants have amended claims 1, 11, 21 and 23 to include structure and/or processing steps to clarify the claimed invention. Also, Applicants have canceled claims 8 and 20 without prejudice or disclaimer. Accordingly, Applicants respectfully request that the rejection of claims 1-26 under § 112, second paragraph, be withdrawn.

Claims 1-13 and 17-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Great Britain Document No. 2 309 038 to Richardson ("Richardson"). Applicants respectfully submit that this rejection has been overcome or is improper for the following reasons.

Richardson discloses a tubular fabric for receiving an underwire in a garment such as a bra. The tubular fabric is formed by arranging a fusible yarn on the interior surface of the tube and melting the yarn to coat that surface. The fabric includes an elastomeric yarn and a support yarn. (See the Abstract). Therefore, Richardson discloses a tubular fabric having a fusible yarn that includes an elastomeric yarn.

On the contrary, the claims of the present application have been amended to clarify that the fabric of the present invention does not include an elastomeric yarn. Therefore, Richardson, which discloses a tubular fabric including elastomeric yarn, does not disclose, teach or suggest the tubular fabric of the present invention which does not include an elastomeric yarn. Accordingly, Richardson does not disclose all of the elements of claims 1-13 and 17-26. Therefore, claims 1-13 and 17-26 are patentably distinguished from Richardson and are in condition for allowance.

Claims 14-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson in view of the International Application No. WO 94/28227 ("the '227 patent"). Applicants respectfully submit that this rejection has been overcome or is improper for the following reasons.

Claims 14-16 depend from claim 1. Applicants respectfully submit that claims 14-16 are allowable for at least the reasons set forth above with respect to claim 1 because the combination of Richardson and the '227 patent do not disclose, teach or suggest the novel elements of these claims, in addition to the novel element of claim 1.

Moreover, the combination of Richardson and the '227 patent does not teach or suggest the elements of claims 14-16 because there is no motivation to combine these references. The Patent Office states that Richardson teaches certain of the limitations or elements of the claimed invention except for "a heat and pressure treatment to provide certain stretch characteristics to the fabric." (See the Office Action, page 6). The Patent Office, therefore, relies on the '227 patent to remedy the deficiencies of Richardson. Specifically, the Patent Office states that the '227 patent teaches the steps of applying heat and pressure to a fabric to obtain certain stretch characteristics.

As described above, Richardson discloses a tubular fabric which includes an elastomeric yarn. As described in Richardson, elastomeric yarns were considered to be a vital component of tubular fabrics. In fact, Richardson states as follows:

"The tubular fabric comprises an elastomeric yarn to lend the fabric a desirable degree of flexibility or "give". This is important as the fabric must be curved to receive an underwire. If the fabric did not include the elastomeric yarn it would not lie flat when the underwire was in position, making the finished product unappealing aesthetically." (Page 4, lines 28-33). (Emphasis added.)

Accordingly, the invention described in Richardson requires an elastomeric yarn.

The '227 patent is directed to a method for imparting stretch to fabrics. The method treats a woven fabric by applying heat and pressure to the fabric. By applying the heat and pressure, the yarn strands substantially across the width of the fabric and thereby forces the fabric closer to together to impart "stretch" to the fabric. Thus, the '227 patent includes a method for imparting stretch to non-stretchable fabrics. A person of ordinary skill in the art, therefore, would not employ the method of the '227 patent with Richardson to impart stretch to the fabric in Richardson where Richardson already discloses a stretchable fabric (i.e., the fabric including the elastomeric yarn). Additionally, Richardson does not disclose, teach or suggest employing such a method for imparting stretch to a tubular fabric.

Moreover, the fabric disclosed by Richardson relates to inner fabrics or inner garments such as a bra. On the contrary, the '227 patent discloses imparting stretch to "non-stretch" outer fabrics. (See page 2, lines 1-5). Therefore, Richardson describes stretchable inner fabrics where the '227 patent is concerned with non-stretchable outer fabrics. Accordingly, a person of ordinary skill in art would not be motivated to combine Richardson with the '227 patent where there is no teaching or suggestion in either reference to make such a combination.

For these reasons, the combination of Richardson and the '227 patent does not disclose, teach or suggest the elements of claims 14-16. Therefore, claims 14-16 are patentably distinguished over the combination of Richardson and the '227 patent and are in condition for allowance.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit consideration of same.

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